

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROGER CLARK,

NO. CIV. S-98-704 LKK/GGH PS

Plaintiff,

v.

O R D E R

COUNTY OF YUBA, et al

Defendants.

Pending before the court are plaintiff's motion to vacate this court's December 16, 2002 order and plaintiff's motion to reopen the case. The court has reviewed the statements of opposition filed by defendants. The matter is decided based on the papers and without oral argument.

**Background**

Plaintiff originally filed suit on April 20, 1998. On June 12, 2002 the magistrate judge assigned to this case recommended that decedents' motion for summary judgment be granted. This court adopted the findings and recommendations on December 16, 2002. The

1 December 16 order terminated the case. Plaintiff appealed,  
2 contending that he was not timely served with defendants' motion  
3 for summary judgment. On December 2, 2003, the Ninth Circuit  
4 affirmed the judgment of this court. The Ninth Circuit  
5 specifically rejected plaintiff's argument that the motion for  
6 summary judgment was untimely. On April 26, 2004, the United  
7 States Supreme Court denied plaintiff's petition for writ of  
8 certiorari.

9 On November 16, 2005, plaintiff filed a motion to set aside  
10 or vacate the court's December 16, 2002 order. Plaintiff again  
11 claimed, inter alia, that the motion for summary judgment was  
12 improperly served. The magistrate judge recommended denying the  
13 motion and this court adopted the recommendation. Accordingly, the  
14 motion to set aside or vacate the December 16, 2002 order was  
15 denied.

16 In plaintiff's pending motions, plaintiff asserts that he  
17 believed the case was still open and that the case was closed by  
18 mistake. Plaintiff also argues that defendants failed to properly  
19 serve their motion for summary judgment.

### 20 **Analysis**

21 Plaintiff presents no compelling reasons why this case should  
22 be reopened or why this court's December 16, 2002 order should be  
23 vacated. It is well established that "[u]nder the 'law of the  
24 case' doctrine a court is generally precluded from reconsidering  
25 an issue that has already been decided by the same court, or a  
26 higher court in the identical case." United States v. Alexander,

1 106 F.3d 874, 876 (9th Cir. 1997) (citing Thomas v. Bible, 983 F.2d  
2 153, 154 (9th Cir.), cert. denied, 508 U.S. 951 (1993)).

3       These motions mark the second time plaintiff has asked that  
4 the court revisit its prior ruling. To the extent that these  
5 motions may be construed as motions to reconsider, plaintiff has  
6 failed demonstrate any new grounds or reasons for why the court  
7 should grant his motions.


8       Local Rule 78-230(k) requires that a party seeking  
9 reconsideration of a district court's order must brief the "new or  
10 different facts or circumstances . . . which . . . were not shown  
11 upon such prior motion, or what other grounds exist for the  
12 motion." Generally speaking, before reconsideration may be granted  
13 there must be a change in the controlling law or facts, the need  
14 to correct a clear error, or the need to prevent manifest  
15 injustice. See United States v. Alexander, 106 F.3d 874, 876 (9th  
16 Cir. 1997).

17       Motion to reconsider are not vehicles permitting the  
18 unsuccessful party to "rehash" arguments previously presented. See  
19 Costello v. United States Government, 765 F. Supp. 1003, 1009 (C.D.  
20 Cal. 1991). Nor is a motion to reconsider justified on the basis  
21 of new evidence available prior to the court's ruling. See Fay  
22 Corp. v. BAT Holdings One, Inc., 651 F. Supp. 307, 309 (W.D. Wash.  
23 1987), aff'd, 896 F.2d 1227 (9th Cir. 1990). These relatively  
24 restrictive standards "reflect[] district courts' concern for  
25 preserving dwindling resources and promoting judicial efficiency."  
26 Costello, 765 F. Supp. at 1009.

1 Here, plaintiff raises the same arguments he raised before the  
2 magistrate judge and before the Ninth Circuit, namely that the  
3 summary judgment motion was untimely. This issue was conclusively  
4 addressed by the magistrate judge as well as the Ninth Circuit.  
5 Plaintiff also fails to establish that there was change in the  
6 controlling law or facts, the need to correct a clear error, or the  
7 need to prevent manifest injustice. See Alexander, 106 F.3d at  
8 876. Upon review of the record, it is evident that all of  
9 plaintiff's claims have been fully adjudicated and there is no  
10 reason for the court to revisit its prior order.<sup>1</sup>

11 IT IS SO ORDERED.

12 DATED: March 9, 2007.

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15 LAWRENCE K. KARLTON  
16 SENIOR JUDGE  
17 UNITED STATES DISTRICT COURT  
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24 <sup>1</sup> The Yuba County defendants seek attorneys fees for the  
25 work incurred in preparing its response to plaintiff's motions. The  
26 court finds that an award of attorneys fees is not appropriate in  
this situation. However, should plaintiff file yet another motion  
for reconsideration the court will entertain defendants' request  
for attorneys fees and/or sanctions.